

FY 91 ANNUAL GROWTH POLICY

Montgomery County, Maryland

Adopted by
Montgomery County Council

June 26, 1990

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Resolution No.: 11-2104
Introduced: June 26, 1990
Adopted: June 26, 1990

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Approval of FY 91 Annual Growth Policy

Background

1. Bill 11-86 requires that no later than June 30th of each year, the County Council must adopt an Annual Growth Policy to be effective throughout the next fiscal year, providing policy guidance to the various agencies of government and to the general public on matters concerning land use development, growth management and related environmental, economic and social issues.

2. On December 27, 1989, in accordance with the requirements of Bill 11-86, the County Executive transmitted to the County Council the FY 91 Annual Growth Policy (AGP) for Montgomery County, showing his revisions to the Annual Growth Policy Draft submitted by the Planning Board on December 1, 1989.

3. In addition, the Annual Growth Policy report as submitted by the County Executive and the Planning Board contained supporting and explanatory materials including forecasts for the most probable trends in population and households, a set of recommended growth capacity ceilings for each policy area within the County, guidelines for the administration of the APFO, and other background information relevant to the subject of growth policy. The Planning Board also submitted a supporting report entitled "Alternative Transportation Scenarios and Staging Ceilings", dated December, 1987. These materials were updated at Council worksessions.

4. On February 1, 1990, the County Council held a public hearing on the County Executive's recommended Annual Growth Policy for Fiscal Year 1991.

5. On May 15, 1990, the County Council adopted the Capital Improvements Program for the years 1991-1996.

6. On June 4, 1990 and June 14, 1990, the Council conducted worksessions on the Annual Growth Policy for FY 1991, at which time careful consideration was given to the public hearing testimony, updated information, recommended revisions of the Montgomery County Planning Board, and the comments and concerns of other interested parties.

7. The County Council reviewed the facts and assumptions underlying this Annual Growth Policy. This included: 1) a detailed review by policy area of existing and projected school and transportation facilities and conditions; 2) discussion of the allocation of transportation capacity between jobs and housing, the "pipeline" of development, and net remaining transportation capacity; 3) a review of the need for a continued special allocation for affordable housing and a new special allocation for health care facilities; and 4) a review of the Annual Report of the Silver Spring Transportation Management District.

8. Under the new transportation staging ceilings, the moratoria on subdivision approvals for housing in North Bethesda and Gaithersburg West that was in effect in FY 90 is eliminated. In other policy areas, additional capacity was allocated to housing to promote the General Plan goal of having a balance between housing and jobs. Although nine policy areas have no net remaining capacity for new subdivision approvals for jobs, new capacity has been added to reduce the duration of such moratoria and bring those areas closer to their average levels of service standard.

9. The jobs/housing ratios of the staging ceilings and net remaining capacity demonstrates improvement in achieving the General Plan goal of a balance between jobs and housing; particularly for geographic areas over which the County has land use control. Substantial job approvals in the Cities of Rockville and Gaithersburg can undermine this goal. Follow-up discussion must be initiated by County and Planning Board officials with appropriate municipal officials to develop a cooperative approach for achievement of this goal.

10. The Council altered "de minimis" approval standards for policy area review to allow for the approval, under certain conditions, of certain small scale retail convenience uses. This change was limited to those small scale retail uses for which the Council had data indicating a large proportion of peak hour "pass-by" trips and few peak hour primary destination trips. These pass-by trips are, by and large, already on the road and accounted for in the transportation model. Consequently, the Council viewed the change as warranted to ensure that some needed and basic retail goods and services are available in neighborhoods that are in policy areas with no net remaining capacity for job approvals. It may also result in shorter trips and, therefore, somewhat less overall congestion in some areas.

11. The County Council reviewed the "pipeline" of development in the County and made adjustments for administrative errors. The Council recognizes efforts made by the Planning Board and the Executive to improve the consistency and reliability of the County growth management data base. These efforts have resulted in a reduction of errors from prior years. In this regard, the Council stresses the need for sustained administrative vigilance in assessing the validity of computer based systems and the reliability of data collection efforts. The Council recognizes that a quantitatively oriented system such as the Annual Growth Policy, though subject to limitations, can promote objectivity and fairness in land-use decision making.

Action

The County Council for Montgomery County, Maryland, adopts the background statement and approves the following Resolution:

The County Executive's recommended FY 91 Annual Growth Policy has been reviewed and amended by the County Council, so that the following constitutes the entire Annual Growth Policy for FY 91:

I. Guidelines for the Administration of the Adequate Public Facilities Ordinance:

The Montgomery County Subdivision Ordinance, Chapter 50, Section 35(k), directs the Montgomery County Planning Board to approve preliminary plans of subdivision only after finding that public facilities will be adequate to serve the subdivision. This involves predicting future demand from private development and comparing it to the capacity of existing and programmed public facilities. The following guidelines describe the methods and criteria that the Planning Board and its staff must use in determining the adequacy of public facilities. These guidelines supersede all previous ones adopted administratively by the Planning Board to the extent that these guidelines conflict with previous ones. They also supersede those provisions of the Adequate Public Facilities Ordinance (APFO) which were specified to apply only until the County Council had approved an Annual Growth Policy (AGP).

The Council accepts the definitions of terms and the assignment of values to key measurement variables which were used by the Planning Board and its staff, and accepted by the Executive, in developing the recommended Annual Growth Policy. The Council delegates to the Planning Board and its staff all other necessary administrative decisions not covered by the guidelines outlined below. In its administration of the APFO, the Planning Board is directed to request and consider the recommendations of the County Executive and other agencies in determining the adequacy of public facilities.

Subdivision applications may be subject to two different types of test. One is called the Policy Area Review. The other is called the Local Area Review.

The Policy Area Review divides the County into policy areas. These are geographic areas for which the adequacy of public facilities is addressed on an area-wide basis, as follows:

- With regard to transportation, a staging ceiling may be established for each policy area.
- With regard to school facilities, a legislative determination will be made whether the school facilities for each policy area will be adequate.

The staging ceiling for a policy area is defined as the maximum amount of land development that can be accommodated by the existing and programmed public facilities serving the area, at an assigned level of service standard. The legislative directive concerning school policy areas reflects a determination whether additional development can be accommodated by the schools. The policy area staging ceilings and directives approved in this Annual Growth Policy are to remain in effect throughout FY 91 unless amended subsequently by the County Council after public hearing. However, the Planning Board may adjust the policy area staging ceilings, in accordance with the Board's administrative procedures, to reflect trip reduction programs or developer participation in capital improvement projects.

Except for special circumstances which are described below (see discussions of "Ceiling Flexibility"), if a proposed subdivision is in a geographic policy area for which previously approved development (pipeline) exceeds the staging ceiling, or for which a negative school facility directive exists, then the Planning Board must find the public facilities to be inadequate.

The purpose of the Policy Area Review method for evaluating the adequacy of transportation facilities is to place the individual subdivision within the context of a comprehensive, countywide assessment, which takes account of, and properly allows for, the upstream and downstream traffic impacts of development in various geographic areas. Similarly, the purpose of the policy area directives concerning school facilities is to reflect the ability of the public school system to accommodate students from new development.

The policy area ceilings and directives described in this AGP are based primarily on the public facilities in the Approved FY 91-96 Capital Improvements Program (CIP) and the Maryland Department of Transportation FY 90-95 Consolidated Transportation Program (CTP). The Council also reviewed related County and State funding decisions, master plan guidance and zoning where relevant, and related legislative actions. These ceilings and directives and their supporting planning and measurement process have been the subject of a public hearing and review during worksessions by the County Council. Approval of the ceilings and directives reflects a legislative judgment that, all things considered, these staging ceilings and procedures constitute a reasonable, appropriate, and desirable set of interim growth limits, which properly relate to the ability of the County to program and construct facilities necessary to accommodate growth. These growth limits will substantially advance County land use objectives by providing for coordinated and orderly development.

These guidelines are not intended to be used as a means for government to avoid its responsibility to provide adequate public facilities. Annual review and oversight allows the Council to identify problems and initiate solutions that will serve to avoid or

limit the duration of any moratorium in a specific policy area. Further, alternatives may be available for developers who wish to proceed in advance of the adopted public facilities program, through the provision of additional public facility capacity beyond that contained in the approved Capital Improvements Program, or through other measures which accomplish an equivalent effect.

The administration of the Adequate Public Facilities Ordinance shall at all times be consistent with adopted master plans and sector plans. Where development staging in adopted master plans or sector plans are more restrictive than APF guidelines, the guidelines in the adopted master plan or sector plan shall be used to the extent that they are more restrictive. More restrictive guidelines can be found in the Friendship Heights Sector Plan, the Silver Spring CBD Sector Plan, the Grosvenor Sector Plan, the Nicholson Lane Sector Plan and the Shady Grove West portion of the Gaithersburg Vicinity Master Plan. The ceiling in the Potomac Policy Area is set at the zoning ceiling based on the policy in the Potomac Master Plan. Development in the Bethesda CBD is controlled by the cordon capacities established in the Bethesda CBD Sector Plan.

The ceiling in all Group I areas is set at the zoning ceiling subject to guidelines for Local Area Review and guidelines for water and sewerage facilities.

A. Guidelines for Transportation Facilities

(1) Policy Area Review

(a) Establishment of Staging Ceilings

For the purposes of transportation analysis, the County has been divided into 246 areas called traffic zones as seen in Map 1. Based upon their transportation characteristics, these areas are grouped into transportation policy areas. In many cases, transportation policy areas have boundaries that are the same as planning area boundaries.

Map 2 shows the policy areas, and the Standard of Transportation Level of Service assigned to each of them. These levels of service standards represent a statistical average over the whole policy area. They are used in the calculations in the traffic simulation model described below. In general, the average level of service standards posted for each policy area are based on a policy that it is appropriate to permit greater congestion to occur in areas in which greater transit availability provides an alternative mode of travel for many travelers in the area. In that way, there is an opportunity for an approximately equivalent overall transportation level of service to the residents and employees throughout the County.

Chart 1 provides a refined basis for showing the correspondence between transit availability and the average level of service standards. It is based primarily upon the material presented in Chapter 6 of the Planning Department background report "Alternative Transportation Scenarios and Staging Ceilings" dated December, 1987. In Chart 1, combinations of transit service that provide increased coverage and frequency and with more accessible and closer spaced stations and stops, are ranked as defining a higher level of transit service.

These underlying conceptual and operational measures of coverage, route density, frequency of service, and accessibility to transit are used primarily in a qualitative manner to describe and rank order the six different transit LOS categorical definitions in Chart 1. This approach takes into account fixed guideway transit systems such as Metrorail, MARC commuter rail, or possible light rail trolley systems. It also applies to bus-based transit systems, high occupancy vehicle priority systems, and auto dependent transit systems which are based in large part on park/ride access as opposed to walk and bus access.

Through the use of a computerized traffic simulation model, the Planning staff has computed a balanced relationship between a programmed set of transportation facilities and a geographical pattern of jobs and housing units. Policy area ceilings have been established through a process which assigns a hypothetical future land use pattern (i.e., jobs, and housing units derived from interim market projections) to the County, and tests its traffic impact through the use of this model. Through a process of repetitive trial and error, this land use pattern has been modified so that it produces a traffic volume and distribution that is equivalent to the average level of service standard for each policy area.

The allocation of transportation capacity between jobs and housing by the County Council reflects its approach to the General Plan recommendation that jobs and housing be balanced. Attainment of that goal is often expressed by the ratio that describes the relationship between the number of employed residents per household to the number of jobs per household. Since the current jobs-to-housing ratio of existing and approved development is tilted towards jobs, allocations of new capacity as well as allocations of any reductions in capacity should generally favor housing.

Some modifications to this approach may be made in specific policy areas to reflect the character of an area and its related development policies as set forth in the relevant master plan(s), the size and allocation of jobs and housing in the existing base and pipeline of development. Modifications may also be made to avoid or reduce the duration of any subdivision moratorium or to address specific equity considerations. The product of these adjustments is tested against the appropriate level of service in the transportation model to determine the specific ceiling allocation as described above. The staging ceilings established by this method are shown in Table 1.

The ceiling in the Fairland/White Oak Policy Area is set at the C/D average level of service. This reflects the policy decision in the Eastern Montgomery County Master Plan that housing density, reduced for environmental reasons near the high-quality Paint Branch tributaries, should be increased in the U.S. 29 corridor where it can be better served by transit, and that, as the number of jobs and housing in this corridor increases, transit service can be increased to adequately serve the transportation needs of this density. The existing and programmed transit facilities and services in the Fairland/White Oak Policy Area are sufficient to classify it as a Group III Policy Area with moderate transit service.

The traffic simulation model takes into account all existing and approved development and all eligible programmed transportation CIP projects. For these purposes, "approved development" includes all approved preliminary plans of subdivision. "Eligible programmed transportation CIP projects" include all County CIP, State Transportation Program projects, and City of Rockville or Gaithersburg projects for which 100 percent of the expenditures for construction are estimated to occur within the first four years of the applicable programs.

Because of the unique nature of the Georgetown Branch Trolley Project in comparison with other transportation systems which are normally used in calculating development capacity, it is prudent to approach the additional capacity from the system in a conservative way, particularly with respect to the timing of capacity and the amount of the capacity recognized. Therefore, the counting of capacity from the Georgetown Branch Trolley Project will not occur until the actual system is constructed and operated, or at least until there is reasonable certainty as to its exact date of operation and amount of actual ridership.

With regard to developer participation projects for MD 118, Father Hurley Boulevard, and MD 117, the counting of additional capacity from these roads must not occur until:

1. proposed developer contributions have been committed by written agreement with the Department of Transportation and the Planning Board;
2. construction of roads is certified in the Approved Road Program as having 100% of the funds appropriated for construction costs and the County Executive has determined that construction will begin within 2 years; and
3. conditions of preliminary plan approval ensure that construction of the proposed development will not precede construction of the necessary road capacity.

Planning staff shall keep a record of all previously approved preliminary plans and other data about the status of development projects, and continuously update the pipeline number of approved preliminary plans, thus constantly keeping in view, and presenting to the Planning Board, the amount of capacity still available under the adopted ceiling at any given time. The continuous updating shall include all changes to the amount of development approved under outstanding preliminary plans, with the exception of those which result from the discovery of accounting errors. Such errors shall be reported to the Council each year in May prior to the Council's adoption of the AGP, and shall be reported on a quarterly basis, or more frequently, to the Planning Board who may bring them to the attention of the Council if the Board judges them to be significant. (Table 2 shows the net capacity remaining as of March 29, 1990.) The Planning Board should maintain a periodically updated queue list of applicants for preliminary plan of subdivision approval.

When the subdivision pipeline has risen to meet the ceiling, no more subdivisions shall be approved by the Planning Board in that policy area, except under certain special circumstances, which are outlined below.

(b) Silver Spring CBD Policy Area Ceiling

The Silver Spring CBD was established as a separate Group VI Policy Area in 1987, as categorized on Map 1 and Chart 1. The boundaries of the new policy area are shown on Map 3.

The job and housing ceilings for this Group VI Policy Area must meet the following administrative guidelines:

- All traffic limitations are derived from the heaviest traffic demand period, in Silver Spring's case, the p.m. peak hour outbound traffic;
- The average level of service for the surrounding Silver Spring/Takoma Park Policy Area must not be worse than the adopted average standard of D/E;
- The outbound traffic, including both local CBD traffic and through traffic, must not exceed the Silver Spring practical cordon capacity of 18,000 vehicles in the peak hour;
- The Planning Board and the Department of Transportation will implement Transportation Systems Management for the Silver Spring CBD; the goal of this program will be to achieve the commuting goals for transit use and auto occupancy rates set out below.

The County Government, through the Silver Spring Parking District, will constrain the amount of public and private long term parking spaces.

For the FY 89 Annual Growth Policy, a net remaining jobs capacity ceiling of 10,750 as of October 8, 1987, of which at least 2,000 must be retail, and 250 are reserved for standard method projects, and a net remaining housing capacity of 3,382 dwelling units meet these administrative guidelines. Since October 1987, a total of 10,310 jobs have received preliminary plan approval. Of these, 2,184 are retail jobs. Of the 441 remaining jobs as of September 1989, 231 remain reserved for standard method projects. Since October 1987, a total of 1,698 housing units have received preliminary approval for a net remaining housing capacity of 1,684 units. (The pipeline does not yet count projects which only have project plan approval such as Cameron Street and East-West Plaza.) The parking constraints and commuting goals needed to achieve satisfactory traffic conditions with these ceilings are as follows:

- **Parking constraint**

A maximum of 17,500 public and private long-term spaces when all nonresidential development is built; (this maximum assumes a peak accumulation factor of .9, which requires verification in Silver Spring and may be subject to revision). Interim long-term parking constraints will be imposed in accordance with the amount of interim development. Long-term public parking spaces will be priced to reflect the market value of constrained parking spaces.

- **Commuting goals**

For employers with 25 or more employees, 25 percent mass transit use and auto occupancy rates of 1.3 persons per vehicle; and
For new nonresidential development, 30 percent mass transit use and auto occupancy rates of 1.3 persons per vehicle.

To achieve these goals it will be necessary to require developers of new development in Silver Spring to enter into traffic mitigation agreements and the employers and certain owners to submit transportation mitigation plans as set forth in the Transportation Systems Management legislation (Bill #24-87).

Each Annual Growth Policy will reflect the Annual Report of the Silver Spring Transportation Management District, which must include a report of the status of critical signalized intersections (as defined in the report of October 5, 1987). The Annual Growth Policy must include a projection of future traffic conditions based on intersection improvements in the proposed CIP and full achievement of the Transportation Management District goals. The Council will take this information into account in the decisions on the Growth Policy and the CIP.

In accordance with the amendment to the Silver Spring Sector Plan, subdivision applications for nonresidential standard method projects throughout the CBD may be approved for development or additions of not more than 5,000 square feet of gross floor area. (If, for a particular use, the addition of five peak hour trips yields a floor area greater than 5,000 square feet, that additional area may be approved for that particular use.)

(c) Aspen Hill and Kensington/Wheaton Policy Areas

Aspen Hill is established as a separate policy area and is classified as a Group III area with an average LOS standard of C/D. It is separated from the former Kensington/Wheaton/Aspen Hill area. The boundary separating the Aspen Hill policy area from the Kensington Wheaton Policy Area is the Rockville Facility right-of-way. Kensington/Wheaton is established as a separate policy area and is classified as a Group IV area with an average LOS standard of D. Boundaries with other policy areas contiguous with the former Kensington/Wheaton/Aspen Hill policy area remain as delineated under the FY 1989 Annual Growth Policy.

(d) Special Ceiling Allocation for Affordable Housing and Health Care Facilities.

The County's policy of balancing growth in each policy area with the supply of public facilities may have the effect of undermining other important County policies for the provision of: 1) a balanced and adequate housing supply, with emphasis on the availability of affordable housing for low and moderate income families; and 2) reasonably accessible health care facilities. This subsection provides a limited exception to policy area review requirements to ensure that these policies are not undermined. The Planning Board may approve subdivision applications for affordable housing and health care facilities in any policy area with insufficient net remaining capacity, according to the following guidelines:

(i) Affordable Housing

- (1) An affordable housing development is defined as a housing development which is either owned by the Housing Opportunities Commission or by a partnership in which HOC is the general partner; or, a privately-owned housing development in which 20% of the units are occupied by households at or below 50% of the area median income, adjusted for family size, or 40% of the units are occupied by households at or below 60% of the area median income, adjusted for family size. Such a development must be certified by HOC as having met the definition of affordable housing and the owner of such development must enter into an agreement with HOC to maintain the occupancy requirements for a period of at least 15 years. These requirements include the provision of any MPDUs.
- (2) For projects owned or controlled by HOC, the Planning Board may approve in FY 91 affordable housing developments which include up to 125 units in a policy area with insufficient net remaining capacity or, for privately owned affordable housing developments, the Planning Board may approve projects which include up to 300 units in a policy area with insufficient net

remaining capacity. In policy areas with both HOC owned and controlled developments and privately owned affordable housing developments, the Board may approve an aggregate of 300 units under this paragraph.

(ii) Health Care Facilities - General

- (1) "Health care facility" and "medical service" have the meanings defined in Title 19 of the Health - General Article of the Maryland Code. "Health care facility" does, however, include kidney disease treatment facilities. It includes a medical office building and medical or dental clinic, as permitted in the zoning ordinance, provided that no general office space is leased or otherwise made available. It does not include home health care agencies.
- (2) Assuming all other requirements for preliminary plan approval are met, and subject to all limitations of this subsection, the Planning Board may grant a special ceiling allocation for a health care facility if:
 - (a) a State certificate of need has been issued for a health care facility requiring such approval; or
 - (b) for facilities not requiring a certificate of need, a determination is made under this paragraph that:
 - (I) a need exists for the proposed health care facility due to an insufficient number of practitioners or facilities providing similar medical services presently available to existing or previously approved concentrations of population within the policy area and that the applicant reasonably can be expected to serve that specific need and;
 - (II) the needs to be served by the health care facility cannot be reasonably accommodated in existing or previously approved (but unbuilt) general office space within the policy area.

(iii) Health Care Facilities - Procedures

- (1) Upon receipt of a request for a special ceiling allocation under subparagraph (ii)(2)(b), the Planning Board must refer the request to: (1) the Office of Zoning and Administrative Hearings with procedural instructions for a hearing on the request and; (2) the Director of the Department of Health for the director's recommendation on the issue of need under subparagraph (ii)(2)(b)(I).

- (2) The applicant must voluntarily consent to a deferral of its application before the Planning Board until after completion of proceedings before the hearing examiner. Requests must be considered on a first come, first served basis in the making of the request for the special ceiling allocation. The Director of Health must make its recommendation to the hearing examiner which shall become a part of the hearing record. The hearing examiner must transmit both the record and a recommendation to the Planning Board in accordance with the Board's procedural instructions. The Planning Board may rely on the record before the hearing examiner without need for further testimony. As with other subdivision issues, the applicant has the burden of producing evidence to support its request and the burden of proof on all applicable standards.

(iv) Health Care Facilities - Findings

- (1) In making a determination of need under subparagraph (ii)(2)(b)(I), the following factors, among other relevant information, should be considered: (1) the recommendation of the Director of the Department of Health; (2) any state or local health plan for the area; (3) the type of medical service and number of practitioners providing the service who are located within the policy area or within a reasonable distance in contiguous policy areas; (4) the business plan of the applicant; (5) occupancy projections, including proposed lease or similar arrangements; and (6) any proposed acquisition or relocation of specialized medical equipment.
- (2) In making a determination on the practicality of existing or planned general office space to reasonably accommodate the needs served by the proposed health care facility under subparagraph (ii)(2)(b)(II), the following factors, among other relevant information, must be considered:
 - (a) the certainty of suitable general office space becoming available within the time frame proposed by the applicant;
 - (b) the need for special construction (i.e sound proofing, lead lined walls or other facilities or construction not normally provided in general office space), plumbing, electrical (i.e. dedicated lines for special equipment), or similar requirements for at least a majority of occupants;
 - (c) if otherwise suitable general office space is in close proximity to or is likely to serve (based on proposed lease or similar arrangements) other health care facilities, medical practitioners, or related services; and

- (d) the likelihood that otherwise suitable general office space will be able to satisfy the needs identified under subparagraph (ii)(2)(b)(I), based on the current marketing plans of the owner of the general office space, cost to the practitioner or health care facility, or other market factors.

A negative finding under either item (a), (c), and (d), above, or an affirmative finding under item (b), above, is sufficient to satisfy the standard under subparagraph (ii)(2)(b)(II).

(v) Health Care Facilities - Special Limitations

- (1) The Planning Board must not approve a preliminary plan for a medical office building or medical or dental clinic under this paragraph that is expected to produce more than 50 new or additional jobs.
- (2) A health care facility must not be granted more than one special allocation under this paragraph.
- (3) Not more than 50 jobs may be approved in a policy area, or 100 jobs, in the aggregate county-wide, in FY 91.
- (4) The applicant must enter into an agreement with the Planning Board to maintain the development as a health care facility for a period of at least 15 years and to undertake appropriate traffic mitigation measures.

(vi) Special Ceiling Allocations - General Requirements

- (1) Any development approved under this subsection must meet all zoning requirements and all other subdivision requirements, including standards for local area transportation review.
- (2) Development approved under this subsection will be added to the pipeline.
- (3) The final draft annual growth policy for FY 92 must contain a list of all pending or approved development under this subsection.

(e) Ceiling Flexibility for Developer Participation Projects

Staging Ceiling Flexibility allows the Planning Board, after considering the recommendation of the County Executive, to approve a preliminary plan application which exceeds the staging ceiling. In allowing the staging ceiling to be exceeded, caution should be exercised to assure that the average level of service for the relevant policy area is not adversely affected. Except as otherwise expressly stated in this subsection, the same level of service criteria already established in the Annual Growth Policy shall be used in evaluating an application to be approved under these ceiling flexibility provisions.

In general, such approval above the staging ceiling shall be conditioned upon the planned and scheduled construction by either the applicant and/or the government, of some public facility projects, or other appropriate capacity measure, (such as the private operation of a transit program) which, if added to the approved CIP or CTP programmed facilities, will add capacity or its equivalent to the existing facility system and result in no lessening of the area-wide level of service.

In general, the capacity addition must be scheduled for completion at the same time or before the proposed development is to be completed. The application must also be approved under Local Area Review standards. The nature, design and scale of the additional project or program must receive prior approval from the relevant governmental agencies responsible for constructing or maintaining such facilities or programs. The recommendation of the Executive also will be evaluated carefully.

Both the subdivision plan and the necessary additional facilities must be in accordance with an adopted master plan or other relevant policy statement; the design of the facilities must be subject to mandatory referral to the Planning Board; and the applicant and the relevant public agency must execute an appropriate public works agreement prior to record plat approval.

The phrase "additional transportation facilities" means transportation facilities other than those on which the policy area staging ceilings of the current Annual Growth Policy are based:

(i) Full-Cost Developer Participation

In cases where the applicant agrees to pay for the full cost of all the additional necessary public facilities, and the relevant administering agency has agreed, the Planning Board may approve subdivision plans whose public facility needs exceed the net remaining capacity under the adopted staging ceiling.

Where the applicant commits to provide the full cost of a transit, para-transit or ridesharing program, such application may be deemed to have passed the staging ceiling test, insofar as transportation is concerned, if the Board finds, after reviewing recommendations of the County Executive, that the program will reduce the number of peak-hour, peak-direction automobile trips by as many trips as would be generated by the proposed development. After a preliminary subdivision plan has been approved on this basis, later applications may be credited for reduced trips generated by the new proposal.

(ii) Partial-Cost Developer Participation

Partial-cost developer participation is available for certain types of development projects under certain circumstances described below. In cases of proposed partial-cost developer participation, the Planning Board may approve subdivision plans whose public facility needs exceed the net remaining capacity

only if the following criteria, standards and requirements set forth in paragraphs (1) and (2) below are met. Related guidance to the Planning Board is set forth in paragraph (5), including provisions relating to approval of, and participation by, other subdivision applicants. Procedures and requirements for executive and legislative action for partial-cost developer participation are contained primarily in paragraphs (3) and (4).

(1) Eligible Project Criteria

- (a) The project has a development staging plan beyond 4 years and enables the consolidation or expansion of an employer already located in the County or allows the establishment of facilities for a new employer. Employer facilities must be primarily for specific and defined employment needs of the employer and not for the sale or leasing of speculative office, industrial or retail commercial space. The employer's business plan, purchase or lease arrangements, staging plan, occupancy projections, and other relevant factors should be considered to determine the primary purpose of the proposed facilities; or
- (b) The project has a development staging plan extending beyond 4 years and enables planned development of superior and integrated design and/or transit serviceability in zoning categories that expressly allow partial-cost developer participation as designated by the District Council;
- (c) The project is to be located in the Research and Development Village, including the County-owned Life Sciences Center, as identified in the approved and adopted Master Plan; or
- (d) The project is to be located in the Germantown Town Center, as identified in the approved and adopted Germantown Comprehensive Master Plan.

(2) Public-Private Participation Requirements

- (a) Additional transportation facilities proposed to serve an eligible project must be sufficient, when combined with net remaining capacity, to provide policy area capacity for both the eligible project and other completed subdivision applications that have been filed earlier than that of the eligible project within the policy area.
- (b) The applicant for the eligible project agrees to condition subdivision approval on a staging schedule which will link the issuance of specific building permits receivable in each staging period to the execution of specific transportation construction contracts in the same staging period.

- (c) The applicant for the eligible project must construct or agree to pay all costs for all additional transportation facilities other than those facilities currently included for start of construction within the first six years of the adopted CIP or within the State Consolidated Transportation Program (CTP).
- (d) The applicant for the eligible project agrees to contribute transportation facilities and/or cash in a minimum amount of the greater of the following:
 - 1. A total of 35% of the cost of all additional transportation facilities, with the cost determined as of the date of execution of the construction contract; or
 - 2. A contribution of 100% of the costs of all additional transportation facilities other than those facilities currently included for start of construction within the first six years of the adopted CIP or within the adopted CTP; such costs are to be determined as of the date of execution of the construction contract for that transportation facility; or
 - 3. Impact fees, if applicable, at the date of issuance of building permit.
- (e) All applicants with residential components agree to be subject to special conditions with regard to school capacity, as described in Section B, Guidelines for Public School Facilities, below.
- (f) The applicant for an eligible project must execute a memorandum of understanding with the County Executive prior to Council action under paragraph (4)(b) specifying the private sector commitments under this paragraph. A separate participating subdivision applicant may also execute the memorandum of understanding. An applicant must agree in the memorandum of understanding that the public improvement agreement be made a condition of subdivision approval.

(3) Procedures and Action - Executive

All formal requests for staging ceiling flexibility under this provision must be made in writing to the County Executive after the applicant has filed a complete subdivision application with the Planning Board. The County Executive must review the request and determine whether or not to recommend authorizing legislation and/or a CIP amendment. The following items, among other relevant factors, should be considered:

- (a) whether the proposed subdivision plan constitutes an eligible project and otherwise meets all requirements of this subsection;
- (b) whether the proposed additional transportation facilities are consistent with the Executive's transportation program in terms of timing, location, design and cost;
- (c) the effect of the proposal on County operating budget or capital programs;
- (d) the financial and managerial capability of the applicant to undertake all requirements of this subsection utilizing current estimates of rights-of-way, design, and construction costs, adjusted for inflation to the date expected for their payment;
- (e) the existence of unresolved transportation programming, fiscal, or other policy issues.

On not less than a quarterly basis, the County Executive must transmit to the Council and Planning Board all written requests for partial cost developer participation that were not recommended and a brief description of the reason. The Council may request the County Executive to reevaluate a request, provide greater detail, or initiate appropriate budgetary or legislative action.

(4) Procedures and Action - County Council

- (a) All proposed CIP amendments and requests for legislative special capital improvement project authorizations must be considered by the Council in accordance with all applicable fiscal and legislative procedures. In addition to any other information required to be submitted under law, the County Executive should submit to the Council information describing:
 - 1. the eligible project for which the facilities are necessary;
 - 2. the proposed staging schedule for both the facilities and the project;
 - 3. public facility programming issues;
 - 4. the impact on the County's finances including the affordability of the proposed public facility program; and
 - 5. a memorandum of understanding specifying, among other things, the private sector commitments under paragraph (2) above.

Before Council action, the Planning Board should comment on the public facility issues presented by the special capital improvement project legislation or CIP designation, the relationship between the additional transportation facilities and the proposed staging schedule, the effect on policy area ceilings, and any other relevant matters, as appropriate.

- (b) For additional transportation facilities required under paragraph (2)(a), above, to be available for partial-cost developer participation under this subsection, the County Council must:
 1. enact all authorizing legislation or resolutions that would be required under law for the facility; and
 2. designate the additional transportation facilities in the CIP, as appropriate for partial cost developer participation or as being fully funded by the private sector.

Transportation facility projects remain subject to all necessary applicable appropriations and federal, state and local regulatory or other approvals.

- (c) Subsequent to any favorable County Council action, the County Executive, or designee, must execute a detailed public improvement agreement that formalizes the memorandum of understanding. The County Executive must periodically report to the Council on the status of public improvement agreements under this subsection and notify the Council of any material changes in circumstances affecting its legislative actions under the partial-cost developer participation provisions.

(5) Planning Board Action; Other Subdivision Applicant Participation

- (a) In its determination of whether transportation facilities are adequate to meet the needs of an eligible project, the Planning Board may count those facilities that have received favorable Council action under paragraph (4)(b); above, for both policy area ceilings and local area review, without the need for those facilities to be shown in the Approved Road Program.
- (b) The Planning Board may similarly count these facilities and approve a subdivision plan with a completed application filing date that is earlier than that of the application of an eligible project if the applicant agrees to participate in the provision of additional transportation facilities, on a proportional trip generation or other agreed cost basis, and in accordance with the staging and public school requirements set forth in paragraph (2)(b) and (e), above. A public improvement agreement may include all participating subdivision applicants.

- (c) A non-participating applicant with an earlier application filing date than the eligible project may have its application approved within the same general time period as the eligible project if it meets normal local area review requirements; however, it must be conditioned so that building permits will be approved only when building permits for the eligible project or participating subdivisions are eligible for approval. A non-participating applicant remains subject to all local area review and other regulatory requirements.

(iii) Miscellaneous Provisions

Further staging ceiling flexibility is not available in the Silver Spring CBD because traffic mitigation measures of the Transportation Management District have been relied upon to establish the ceilings for the Group VI Policy Area in Silver Spring.

(f) Ceiling Flexibility - De Minimis Impacts

(i) General.

The approval of preliminary plans which add only a few vehicle trips will be considered on a case-by-case basis by the Planning Board. In general, in policy areas with no ceiling balance (i.e., no remaining capacity), all land at one location for which zoning or other constraints permit no more than ten trips in total may receive approval of up to five trips. Non-residential plans submitted for the purpose of expanding structures which were completed prior to 1982 may receive approval for additional development which add no more than five trips. (The term, "all land at one location," means all land that would be included in a determination of whether a project is a "significantly sized project" under the Planning Board's guidelines for Local Area Transportation Review which were adopted on December 21, 1989.)

(ii) Small Scale Retail Convenience Uses with High Pass-By Trips

- (1) Subject to the limitations of this subsection (ii), the Planning Board may approve a non residential plan for not more than one small scale convenience use on one lot that:
 - (a) generates primarily pass-by trips; and (b) provides for the needed sale of convenience goods or services to serve the immediate neighborhood.
- (2) The standard under paragraph (1) is satisfied only if:

- (a) at least 60% of the PM peak-hour trips generated by the use are pass-by (not diverted trips) and not more than 20% of the PM peak hour trips generated by the use are primary trips to the use;
 - (b) the gross leasable area of the convenience use does not exceed 3,000 square feet, including any kiosk, storage or similar buildings;
 - (c) the use is proposed for a single retail establishment and is not part of an expansion of a shopping center;
 - (d) a finding of need has been made by the Board of Appeals in conjunction with a special exception; or where a finding of need is not required by law, such a use does not exist or has not been approved by the Planning Board within a 1 mile radius of a proposed location; and
 - (e) the proposed use is consistent with the applicable master or sector plan or is an approved special exception.
- (3) The Board must not approve a proposed plan under this subsection if the proposed convenience use, in combination with adjacent or nearby uses (on lots within 1 mile) that have been approved under this subsection, totals more than 50 peak hour primary destination trips.
- (4) For purposes of this subsection, "convenience use" means, and is limited to, an automobile filling station, or a convenience food or beverage store, or both, as defined in the Zoning Ordinance. It does not include a car wash proposed as an accessory use because the high number of weekend primary trips associated with it does not justify a characterization of the use as "small scale" for a de minimis approval under this subsection.
- (5) An applicant must show, by clear and convincing evidence, that it meets all requirements of this subsection.

(g) Amendment of Policy Ceilings

From time to time, these staging ceilings may be amended by the Montgomery County Council, after public hearing, to reflect changing conditions such as additions to the Capital Improvements Program or the State's Consolidated Transportation Program, changing patterns of public

facility usage, revised levels of public service, and other relevant criteria. The effect of the various traffic alleviation measures approved under the 1986 Interim Growth Policy (i.e., short-term traffic alleviation measures) has not been included in the development of the policy area ceilings. If measurable results become evident, consideration could be given to revision of the ceilings.

Policy area ceilings may also be amended by the County Council to resolve public policy conflicts and to accomplish a particular public policy objective.

(h) Allocation of Staging Ceiling to Preliminary Plans of Subdivision

The Planning Board allocates available staging ceiling capacity in a policy area based on the queue date of an application for preliminary plan of subdivision approval.

(i) Assignment of queue date

The queue date of a preliminary plan of subdivision is the date:

- (1) a complete application is filed with the Planning Board;
- (2) an updated traffic study is filed, if required to obtain a new queue date under paragraph (iv)(2); or
- (3) 6 months after the prior queue date if the prior queue date expires under subparagraph (iii)(1)(a) and the application does not include a traffic study.

(ii) Calculation of available staging ceiling capacity

The Planning Board determines whether there is adequate staging ceiling capacity available for a project by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 2 as updated periodically. Based on this calculation, the Planning Board may:

- (1) approve a project for which there is sufficient capacity;
- (2) approve part of a project for which there is sufficient capacity, leaving the remainder of the project in the queue until additional capacity becomes available;
- (3) deny an application for a project for which there is insufficient capacity; or

- (4) defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. In situations where there is insufficient capacity, staff should not reschedule a hearing on the application unless the applicant requests one.

If there is sufficient capacity for a project based on the queue date, the Planning Board must not deny an application based on pipeline changes while the queue date is in effect.

(iii) Expiration of queue date

- (1) A queue date for an application for preliminary plan of subdivision approval expires:
 - (a) 6 months after the queue date if there is sufficient staging ceiling capacity for the entire project on the queue date and the Planning Board has not scheduled the application for action;
 - (b) 6 months after sufficient capacity becomes available for the entire project if an updated traffic study is not required under paragraph (iv)(1);
 - (c) 6 months after an updated traffic study is filed if required under paragraph (iv)(1); or
 - (d) on the applicant's failure to request background data, to submit an updated traffic study, or to submit a complete updated traffic study after notice that a study is incomplete, all within the time limits in subsection (iv).
- (2) The Planning Board may grant up to a 6-month extension of a queue date if the applicant demonstrates that a queue date expired or will expire because of governmental delay beyond the applicant's control.

(iv) Updated traffic studies

- (1) Required when sufficient capacity becomes available.

The queue date of an application for which there is not sufficient staging ceiling capacity when the complete application is filed, and which includes a traffic study, will expire when sufficient capacity becomes available, unless the applicant:

- (a) requests background data from the Planning Board to prepare an updated traffic study within 1 month after capacity becomes available; and
 - (b) submits an updated traffic study within 1 month after receiving the background data. However, if the Planning Board provides the background data between June 1 and September 15, the updated study must be submitted by October 15.
- (2) Required to obtain a new queue date after expiration

If the queue date of an application which includes a traffic study expires, an updated traffic study must be filed to obtain a new queue date.

- (3) Notice of incomplete updated traffic study

The Planning Board must notify an applicant within 15 days after an updated traffic study is filed if the study is incomplete. An applicant must file a complete traffic study within 30 days of receipt of the notice that a study is incomplete.

(2) Local Area Review (LAR)

The traffic simulation model used for Policy Area Review addresses the average level of traffic in the policy area. If this were the only test, an area with acceptable average level of service could have one or more intersections, or roadway links, with unacceptably poor levels of service. It is necessary, therefore, that a local area test be applied to assure that new development is not allowed to cause such congestion.

Local Area Review shall, at all times, be consistent with the standards and staging mechanisms of adopted master plans and sector plans. In the Potomac Policy Area, only the areas contributing traffic to the following intersections will be subject to Local Area Review: (a) Montrose Road at Seven Locks Road; (b) Democracy Boulevard at Seven Locks Road; (c) Tuckerman Lane at Seven Locks Road; (d) Democracy Boulevard at Westlake Drive; (e) Westlake Drive at Westlake Terrace; (f) Westlake Drive at Tuckerman Lane; and (g) Bradley Boulevard at Seven Locks Road.

In the area designated as the Silver Spring CBD Policy Area, the Planning Board, in consultation with the Department of Transportation, will prepare performance evaluation criteria for its Local Area Review. These criteria will be used to accomplish: (a) safety for pedestrians and vehicles; (b) access to buildings and sites; and (c) traffic flow within the vicinity, at levels which are tolerable in an urban situation. The County Executive will publish a Silver Spring Traffic Management Program after receiving public

comment and a recommendation from the Planning Board. This program will list those actions to be taken by government to maintain traffic flow at tolerable levels in the Silver Spring CBD, and protect the surrounding residential area.

For analysis of properties located within the Friendship Heights Central Business District, as defined by the 1974 Friendship Heights Sector Plan, any traffic trips from approved and/or built projects on certain properties in the District of Columbia which exceed the total of 2,329 new trips allocated to those same properties in the District of Columbia pursuant and subject to the August 30, 1973 statement of the Inter-Jurisdictional Policy Task Force on Friendship Heights (as set forth in Appendix "E" and referred to on pages 39-41 of the 1974 Friendship Heights Sector Plan), shall not be used in making a determination that local intersections are operating at adequate levels of service.

Local Area Review must be undertaken for subdivisions which would generate more than 50 peak hour automobile trips in either of the following circumstances:

- For the policy area, total approved development is within 5 percent of the policy area ceiling; or
- For the local area, the proposed development is located near a congested area.

In administering the Local Area Review (LAR), the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after taking into account existing roads, programmed roads, available or programmed mass transportation, and improvements to be provided by the applicant. If the subdivision will affect an intersection, or roadway link for which congestion is already unacceptable, then the subdivision may only be approved if it does not make the situation worse.

The mid-point of Level of Service E is presumed to be the condition under which a roadway intersection or link is operating at maximum capacity. Critical Lane Volumes or Link Level of Service higher than the mid-point of LOS E are deemed to reduce the overall efficiency of the road network. For Groups II to V Areas, a peak hour level of service below the midpoint of LOS E is unacceptable for Local Area Review. In Group I Areas, Level of Service below Level of Service D is unacceptable for Local Area Review. Administrative guidelines for LAR in the Silver Spring CBD Policy Area have been adopted by the Planning Board (December 21, 1989).

The nature of the LAR test is such that a traffic study is necessary if local congestion is likely to occur. The Planning Board and staff will examine the applicant's traffic study to determine whether adjustments are necessary to assure that the traffic study is a reasonable and appropriate reflection of the traffic impact of the proposed subdivision after taking into account all approved development and programmed transportation projects.

For Local Area Review purposes, the programmed transportation projects to be considered are those included in the most recent edition of the County Executive's Approved Road Program (ARP). The Approved Road Program shall include only roads programmed in the current approved Capital Improvements Program and the Maryland Consolidated Transportation Program for which:

- (1) The County Executive has determined that construction will begin within two years of the effective date of the approved road program; and
- (2) In the case of the County CIP, 100 percent of the expenditure for contracts, have been appropriated.

For these purposes, roads required under Section 302 of the Charter to be authorized by law are not to be considered programmed until the time for petition to referendum has expired without a valid petition, or the authorizing law has been approved by referendum.

The Planning Board has adopted guidelines for the administration of Local Area Review. To the extent that they are consistent with these legislative guidelines, the Planning Board guidelines may continue to apply or to be amended as the Planning Board deems it necessary to do so.

In its administration of Local Area Review, the Planning Board shall give careful consideration to the recommendations of the County Executive concerning the applicant's traffic study and proposed improvements or any other aspect of the LAR.

B. Guidelines for Public School Facilities

(1) Geographic Area

For the purposes of public school analysis and local area review of school facilities at time of subdivision, the County has been divided into 21 areas called high school clusters as shown in Map 4. These areas coincide exactly with the cluster boundaries used by the Montgomery County Public School system.

The Council evaluated available capacity in each high school cluster and compared enrollment projected by Montgomery County Public Schools for each fiscal year with projected school capacity four years out.

If insufficient capacity was available, the Council determined whether an adjacent cluster or clusters had sufficient capacity to cover the projected deficit in school capacity. The Council's groupings were only for the administration of the Adequate Public Facilities Ordinance and are not in any way a required action by the Board of Education in exercising its power to designate school service boundaries.

(2) School Capacity Measure

The Council used 110 percent of Council funded program capacity as the school capacity measure in the administration of the Adequate Public Facilities Ordinance. This capacity measure does not count relocatable classrooms in computing a school's permanent capacity. Based on the approved FY 91-96 CIP, the Council funded regular program capacity is a class size of 25 for grades 1-6, 44 for half day kindergarten where it is currently provided, 22 for all day kindergarten where it is currently provided, and an effective class size of 22.5 for secondary grades.

(3) Grade Levels

Each of the three grade level clusters, namely elementary, J/I/M, and high school are assessed separately as part of the Annual Growth Policy. Using the approach outlined above, and assuming the approved FY 91-96 CIP, the Council declares school capacity for school year 1994 to be adequate for anticipated growth during FY 91 in all high school clusters. Tables 3, 4, and 5 present the results of this analysis.

The Planning Board, in its review of preliminary plans of subdivisions, shall consider schools to be adequate for APFO purposes in all clusters for FY 1991.

(4) Affordable Housing

Because school capacity for Adequate Public Facility purposes has been determined adequate for 1991, the Special Ceiling Allocation for Affordable Housing may be invoked only with respect to transportation ceilings. The need for a Special Ceiling Allocation with respect to school capacity will be considered at such time capacity is inadequate for a particular policy area.

(5) Ceiling Flexibility for Partial Cost Developer Participation

When a subdivision with a residential component is approved for transportation capacity under the provisions of the Partial Cost Developer Participation subsection, the Planning Board may approve the subdivision for school facility adequacy if: (a) the subdivision is located in a school cluster area that has been designated as adequate for school capacity; and (b) the applicant agrees to condition his subdivision approval on a staging schedule, which will require the applicant to receive a subsequent APF approval for school capacity for all of the housing units that are scheduled in his staging plan to receive building permits after the end of the four year period used in calculating school capacity in this Annual Growth Policy. This does not imply any obligation on the part of the Council to provide public school facilities in accordance with any staging plan and the applicant may provide private resources for school sites and/or school construction in order to assure adequate school capacity.

C. Guidelines for Water and Sewerage Facilities

In accordance with the language of the Adequate Public Facilities Ordinance itself, both for policy areas with a staging ceiling and in those without one, applications shall be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available, is under construction, or is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (i.e., categories I, II, and III) or if the applicant either provides a community water and/or sewerage system or meets health department requirements for septic and/or well systems, as outlined in the Adequate Public Facilities Ordinance. These requirements are determined either by reference to the Water and Sewerage Plan, adopted by the Council, or by obtaining a satisfactory percolation test from the County Health Department.

Applications will only be accepted for further planning staff and Board consideration if they present evidence of meeting the appropriate requirements.

D. Guidelines for Police, Fire and Health Services

The Planning Board and staff shall consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence to believe that a local area problem will be generated. Such a problem is one which cannot be overcome within the context of the approved Capital Improvements Program and Operating Budgets of the relevant agencies. Where such evidence exists, either through agency response to the Subdivision Review committee clearinghouse, or through public commentary or planning staff consideration, a Local Area Review shall be undertaken. Such review shall seek a written opinion from the relevant agency, and will require, if necessary, additional data from the applicant, to facilitate the completion of the planning staff recommendation within the statutory time frame for Planning Board action. In performing this Local Area Review, the facility capacity at the end of the sixth year of the approved CIP shall be compared to the demand generated by the "most probable" forecast for the same year prepared by the Montgomery County Planning Department.

E. Guidelines for Resubdivisions

Applications to amend a previously approved preliminary plan of subdivision shall not require a new test for adequacy of public facilities in the following instances:

- Revisions to a preliminary plan which has not been recorded. Provided that the preliminary plan has not expired and the number of trips which will be produced by the revised plan is not greater than the trips produced by the original plan.

- Resubdivision of a recorded lot involving the sale or exchange of parcels of land (not to exceed a total of 2,000 square feet or one percent of the combined area, whichever is greater) between owners of adjoining properties for the purpose of small adjustments in boundaries.
- Resubdivision of a recorded lot involving more than 2,000 square feet or one percent of the lot area provided that less than three years have passed since preliminary plan approval; or if construction has begun on any portion of the preliminary plan, less than five years have passed since preliminary plan approval; or, if construction of an APF related road improvement required as a condition of the original preliminary plan is proceeding as scheduled, less than 10 years have passed since preliminary plan approval. In addition to meeting the requirements above, the number of trips which will be produced by the revised plan shall not be greater than the trips in the original plan.

II. Timely Adequate Public Facilities Determination and Local Area Transportation Review under Chapter 8 – Buildings.

- A. General.** Except as otherwise provided by law, an adequate public facilities determination or local area transportation review conducted under Article IV of Chapter 8 must use the standards and criteria applicable under Section I. of this Resolution when evaluating the adequacy of public facilities to serve the proposed development.
- B. Traffic Mitigation Goals.** Any proposed development that is subject to requirements for a traffic mitigation agreement under Article IV of Chapter 8 and Chapter 42A-9A of the County Code must meet the traffic mitigation goals specified in paragraphs (1) or (4), as appropriate.
- (1) Subject to paragraph (2), the portion of peak-period nondriver trips by employees of a proposed development must be at least the following percentage greater than the prevailing nondriver mode share of comparable nearby land use:

(a)	Group V Policy Areas:	100%
(b)	Group IV Policy Areas:	80%
(c)	Group III Policy Areas:	60%
(d)	Group II Policy Areas:	40%
 - (2) The portion of peak-period nondriver trips by employees calculated under paragraph (1) must not be less than 15% nor higher than 55%.
 - (3) The applicant for a proposed development in a policy area specified under paragraph (1) is responsible for: reviewing existing studies of nondriver mode share; conducting new studies, as necessary, of nondriver mode share; and identifying the

prevailing base nondriver mode share of comparable land uses within the area identified for the traffic study. Comparable land uses are improved sites within the area identified for the traffic study for the proposed development that have similar existing land use and trip generation characteristics. As with other aspects of the traffic study required by Article IV of Chapter 8 of the Code, selection of the comparable studies and land uses to be analyzed and determination of the prevailing base nondriver mode share are subject to review by the Planning Department of the Planning Board and approval by the Department of Transportation.

- (4) Proposed development in the Silver Spring CBD must meet the commuting goals specified under Section I(A)(1)(b) of this Annual Growth Policy.
- (5) In accordance with Section 42A-9A of the Code, the applicant must enter into an agreement with the Director of the Department of Transportation prior to issuance of a building permit. The agreement may provide for a schedule for full compliance with the traffic mitigation goals. It must provide appropriate enforcement mechanisms for compliance.
- (6) As provided by law, these goals supersede traffic mitigation goals established under Section 42A-9A (a)(4) of the Code.

III. Process for Amending Annual Growth Policy

Chapter 33A, Division 2, of the Montgomery County Code provided that "the County Council may adopt a subsequent resolution, after public hearing, to amend the Annual Growth Policy." The amendment process should be reserved for situations in which a need arises to resolve broad policy issues without waiting for the annual cycle of revision. In such cases, the process should follow a format similar to the one provided for the annual revision process under Chapter 33A, consisting of the following steps:

- (1) A request for amendment must be made in writing to the Planning Board.
- (2) The Planning Board may, in response to such request or on its own initiative, prepare an amendment. The amendment must be accompanied by a statement of the severity of the problem addressed, the nature of the conflict in public policies which is involved, and approaches for resolving the conflict, including any specific recommendations. In cases where the Council or Executive requests an amendment which the Planning Board does not support, the Board must prepare a draft which complies with the original request, in addition to its own recommendations.
- (3) The Planning Board's amendment must be submitted to the County Executive, who may make revisions in the form of specific additions or deletions, and who must then recommend an amendment to the County Council.

- (4) After public hearing by the County Council, the Council may approve, approve with revisions, or disapprove, the amendment recommended by the Executive.
- (5) The Planning Board's amendment must be forwarded to the County Executive not more than forty-five days after receipt of a written request from the Executive or Council. The Executive's recommended amendment must be forwarded to the County Council not more than thirty days after receipt of the Planning Board's amendment. The Council should act on the recommended amendment not more than 45 days after the closing of the public hearing record.

IV. Issues to be Addressed During Next Fiscal Year

In adopting the FY 1991 Annual Growth Policy, the Council recognizes that not all aspects of a comprehensive approach to growth policy can be dealt with in one year. To ensure that the policy making process continues to be developed and refined, the following matters are to be addressed by the Planning Board and the Executive during the next fiscal year.

- (1) **Comprehensive Review of the Structure of Policy Areas** - Priority should be given to conforming existing policy areas with City of Rockville and Gaithersburg boundaries, where appropriate, and the creation of smaller policy areas around Metrorail stations using existing sector plans. Criteria identified in the County Executive's Recommended FY 91 AGP should be utilized and satisfactory provisions made for any existing queues.
- (2) **Job Approvals By Municipalities** - Discussions should be initiated with the Mid-County Planning Committee and other appropriate municipal officials to express concern that substantial approvals for jobs can undermine the General Plan goal of a balance between jobs and housing and to develop a cooperative approach to achieving this goal. The Council should be briefed on this issue as part of a Planning Board quarterly report.
- (3) **Developer Participation in Germantown** - The Council should be briefed on private contributions to fund or construct improvements to MD 117, MD 118, and Father Hurley Blvd., after the affected property owners or developers have reached agreement.
- (4) **Review of Traffic Mitigation Programs.**
- (5) **Pipeline Information** - Information should be provided that identifies the impact of special ceiling allocation, de minimis, "loophole", and similar approvals on the current year's pipeline.
- (6) **Optional Method Information** - Information should be provided that identifies optional method projects approved in CBD zones during calendar year 1990 with a description of allowable densities, amenities to be provided, and impact on the pipeline. This

information may be provided to the Council as part of a Planning Board quarterly report.

- (7) **Staging Ceilings** - An evaluation should be made of the Productivity Housing Technical Committee recommendation that calculation of housing staging ceilings consider projects where 100 percent of the funds have been appropriated in the first 5 years of the CIP. In conjunction with the effort to restructure policy areas, there should be continued review of the desirability of increasing the number of groups of Average Level of Service to be more sensitive to transit or HOV lanes.
- (8) **Germantown Town Center** - There should be continued review of the desirability and feasibility of creating separate categories of job ceilings for retail and office employees.

This is a correct copy of Council action.

A handwritten signature in cursive script, reading "Kathleen A. Freedman", is written over a horizontal line.

Kathleen A. Freedman, CMC
Secretary of the Council

CHART 1: CORRESPONDENCE BETWEEN TRANSIT AVAILABILITY AND AVERAGE LEVEL OF SERVICE STANDARDS

Average Level of Service Standards	Group Classifications	Public Transport Alternatives to Automobile Travel	Transit Services Available or Programmed				
			Auto Dependent System	and/or	Bus Base Systems	and/or	Fixed Guideway Systems
			Park/Ride Access	Community and Local Bus Service	Regional Park/Ride Express Bus and High Occupancy Vehicle Priority Systems	Commuter Rail or Light Rail	Metrorail
*	I	Marginal	Marginal access to stations or bus routes outside of the area	Not available	Not available	Marginal amount of the area is within walk access	Not Available
\overline{C}	II	Limited	Limited number of park/ride spaces	Limited coverage and frequency	Limited park/ride spaces or lots with local bus service	Limited park/ride access and walk access	Park/ride and kiss/ride access limited to nearby stations outside of the area
$\overline{C}/\overline{D}$	III	Moderate	Moderate number of park/ride spaces, limited kiss/ride service	Moderate coverage, service limited to policy frequencies	Moderate express bus service in conjunction with a system of park/ride lots	Moderate parking or walk access with system transfers	Moderate station coverage in the area with associated feeder access
\overline{D}	IV	Frequent	Moderate park/ride spaces and moderate kiss/ride service	Moderate coverage, combined policy and frequent demand-based service	Priority treatment for frequent express buses, local circulation feeder services in conjunction with a system of park/ride lots	Same as Group III above	More dense spacing of stations and bus routes
$\overline{D}/\overline{E}$	V	Full	Limited park/ride with full reliance on kiss/ride access	Full area coverage and a large number of routes with frequencies based on demand	Same as Group IV above	Same as Group III above	Full frequency and full reliance on kiss/ride, easier walk and bicycle access
*	VI	Expanded	Expanded park/ride with reliance on kiss/ride access	Expanded bus frequencies; 100 buses in PM peak	Same as Group IV above	Same as Group III above	Designated CBD; controlled parking; Transportation Mgmt. District

* See Text of the Recommended FY 90 AGP for Methods and Standard of Measuring Traffic.

Source: Montgomery County Planning Department.

Table 1

FY 91 APF Transportation Ceilings¹
(January 1989 Base)

Policy Area ¹	Jobs Ceiling ²	Housing Units Ceiling ²
Aspen Hill	358	-1,954
Bethesda CBD ³	4,157	1,638
Bethesda/Chevy Chase	11,049	3,868
Cloverly	-80	-1,625
Damascus	776	-569
Fairland/White Oak	-2,501	-469
Gaithersburg East	5,691	6,270
Gaithersburg West	25,520	8,364
Germantown East	2,401	2,407
Germantown West ⁴	7,631	2,150
Kensington/Wheaton	6,569	2,698
North Bethesda	7,116	2,849
Olney	834	2,903
Potomac ³	3,019	3,424
Rockville	15,163	3,350
Silver Spring CBD	11,849	3,382
Silver Spring/Takoma Park	936	678
Total Policy Areas	103,069	43,981

¹ Group I Policy Areas are not assigned staging ceilings. In these areas, subdivision applications are subject to Transportation Local Area Review, as well as to relevant zoning and water and sewer constraints.

² The ceilings indicate the amount of additional development that can be supported with the transportation capacity available from the first four years of the approved FY 91-96 CIP or FY 90-95 State CTP. Negative numbers indicate the amount by which the estimated level of development exceeds the FY 91 ceilings.

³ Although ceilings are shown for all policy areas, development in Potomac is controlled by Zoning/Water/Sewer constraints and in the Bethesda CBD by the Cordon Capacities established in the CBD Sector Plan.

⁴ The FY 91 housing staging ceiling was reduced below the FY 90 in Germantown West ceiling because the funding status of MD 118 Relocated was changed to include developer contributions.

NOTE: Numbers in columns may not sum to policy area totals as negative numbers are treated as zero for summation purposes.

Source: Montgomery County Planning Department, Research Division, June 6, 1990.

Table 2

Remaining Capacity Under
FY 91 APF Transportation Ceilings as of March 29, 1990
(January 1989 Base)

Policy Area ¹	Jobs Ceiling ²	Pipeline	Remaining Capacity	Housing		Remaining Capacity
				Units Ceiling ²	Pipeline	
Aspen Hill	358	24	334	-1,954	3,178	-5,132
Bethesda CBD ³	4,157	4,186	-29	1,638	840	798
Bethesda/Chevy Chase	11,049	994	10,055	3,868	1,759	2,109
Cloverly	-80	105	-185	-1,625	432	-2,057
Damascus	776	503	273	-569	252	-821
Fairland/White Oak	-2,501	9,126	-11,627	-469	1,949	-2,418
Gaithersburg East	5,691	12,068	-6,377	6,270	4,563	1,707
Gaithersburg West	25,520	26,530	-1,010	8,364	5,743	2,621
Germantown East	2,401	2,399	2	2,407	1,918	489
Germantown West ⁴	7,631	8,858	-1,227	2,150	2,926	-776
Kensington/Wheaton	6,569	419	6,150	2,698	444	2,254
North Bethesda	7,116	9,951	-2,835	2,849	1,477	1,372
Olney	834	779	55	2,903	2,716	187
Potomac ³	3,019	838	2,181	3,424	1,699	1,725
Rockville	15,163	18,750	-3,587	3,350	1,409	1,941
Silver Spring CBD	11,849	11,408	441	3,382	1,698	1,684
Silver Spring/Takoma Park	936	1,042	-106	678	208	470
Total Policy Areas	103,069	107,980	19,491	43,981	33,211	17,357

¹ Group I Policy Areas are not assigned staging ceilings. In these areas, subdivision applications are subject to Transportation Local Area Review, as well as to relevant zoning and water and sewer constraints.

² The ceilings indicate the amount of additional development that can be supported with the transportation capacity available from the first four years of the approved FY 91-96 CIP or FY 90-95 State CTP. Negative numbers indicate the amount by which the estimated level of development exceeds the FY 91 ceilings.

³ Although ceilings are shown for all policy areas, development in Potomac is controlled by Zoning/Water/Sewer constraints and in the Bethesda CBD by the Cordon Capacities established in the CBD Sector Plan.

⁴ The FY 91 housing staging ceiling was reduced below the FY 90 in Germantown West ceiling because the funding status of MD 118 Relocated was changed to include developer contributions.

NOTE: Numbers in columns may not sum to policy area totals as negative numbers are treated as zero for summation purposes.

Source: Montgomery County Planning Department, Research Division, June 6, 1990.

Table 3
ELEMENTARY SCHOOLS BY HIGH SCHOOL CLUSTER AND AREA
Comparison of 1994 MCPS Projected Elementary School Enrollment to
County Council Approved FY 91 - FY 96 CIP Program Capacity

	A	B	C	D	E
		100% of 1994 Program		110% of 1994 Program	
School Policy Areas (High School Cluster)	September 1994 Enrollment Projected by MCPS ¹	Capacity With County Council Approved FY 91-96 CIP ²	Capacity Remaining at 100% B-A	Capacity with County Council Approved FY 91-96 CIP B*110%	Capacity Remaining at 110% D-A
<u>Area 1</u>					
Bethesda-Chevy Chase	3,103	2,848	(255)	3,133	30
Blair	4,632	4,958	326	5,454	822
Einstein	2,930	2,961	31	3,257	327
Walter Johnson	2,628	2,800	172	3,080	452
Whitman	<u>2,170</u>	<u>2,168</u>	<u>(2)</u>	<u>2,385</u>	<u>215</u>
Subtotal	15,463	15,735	272	17,309	1,846
<u>Area 2</u>					
Churchill	2,364	2,488	124	2,737	373
R.Montgomery	2,548	2,479	(69)	2,727	179
Quince Orchard	4,448	4,744	296	5,218	770
Rockville	2,224	2,813	589	3,094	870
Wheaton	2,340	2,814	474	3,095	755
Wootton	<u>3,446</u>	<u>3,071</u>	<u>(375)</u>	<u>3,378</u>	<u>(68)</u>
Subtotal	17,370	18,409	1,039	20,250	2,880
<u>Area 3</u>					
Damascus	3,360	3,155	(205)	3,471	111
Gaithersburg	5,971	6,199	228	6,819	848
Poolesville	1,033	973	(60)	1,070	37
Seneca Valley	5,126	5,350	224	5,885	759
Watkins Mill	<u>3,760</u>	<u>3,337</u>	<u>(423)</u>	<u>3,671</u>	<u>(89)</u>
Subtotal	19,250	19,014	(236)	20,915	1,665
<u>Area 4</u>					
Kennedy	2,600	2,631	31	2,894	294
Magruder	2,370	2,527	157	2,780	410
Paint Branch	3,786	3,850	64	4,235	449
Sherwood	2,815	2,780	(35)	3,058	243
Springbrook	<u>4,106</u>	<u>4,359</u>	<u>253</u>	<u>4,795</u>	<u>689</u>
Subtotal	15,677	16,147	470	17,762	2,085
	=====	=====	=====	=====	=====
Total	67,760	69,305	1,545	76,236	8,476

1 Enrollment projections by Montgomery County Public Schools.

2 Cluster capacity as stated in the County Council's Approved FY 91-96 CIP. Program Capacity assumes the student per classroom ratio as funded by the Montgomery County Council (i.e., 25 students per classroom for grades 1 to 6).

Source: Montgomery County Public Schools, Educational Facilities Planning and Development; Montgomery County Planning Department, Research Division; and the FY 91-96 CIP as approved by the County Council.

Table 4

JIM SCHOOLS BY HIGH SCHOOL CLUSTER AND AREA

Comparison of 1994 MCPS Projected Junior, Intermediate, & Middle (JIM) School Enrollment to
County Council Approved FY 91 - FY 96 CIP Program Capacity

	A	B	C	D	E
		100% of 1994 Program Capacity With County Council Approved FY 91-96 CIP ²	Capacity Remaining at 100% B-A	110% of 1994 Program Capacity with County Council Approved FY 91-96 CIP B*110%	Capacity Remaining at 110% D-A
School Policy Areas (High School Cluster)	September 1994 Enrollment Projected by MCPS ¹				
<u>Area 1</u>					
Bethesda-Chevy Chase	626	896	270	985	359
Blair	2,295	1,602	(693)	1,762	(533)
Einstein	1,153	1,197	44	1,317	164
Walter Johnson	1,129	1,125	(4)	1,238	109
Whitman	<u>988</u>	<u>1,017</u>	<u>29</u>	<u>1,119</u>	<u>131</u>
Subtotal	6,191	5,837	(355)	6,420	229
<u>Area 2</u>					
Churchill	1,131	1,625	494	1,787	656
R.Montgomery	896	896	(1)	985	89
Quince Orchard	1,067	1,062	(5)	1,168	101
Rockville	922	963	41	1,059	137
Wheaton	1,025	1,125	100	1,238	213
Wootton	<u>770</u>	<u>837</u>	<u>67</u>	<u>921</u>	<u>151</u>
Subtotal	5,811	6,507	696	7,158	1,347
<u>Area 3</u>					
Damascus	755	869	114	955	200
Gaithersburg	1,302	1,179	(123)	1,297	(5)
Poolesville ³	0	0	0	0	0
Seneca Valley	1,823	1,850	27	2,034	211
Watkins Mill	<u>1,007</u>	<u>752</u>	<u>(256)</u>	<u>827</u>	<u>(180)</u>
Subtotal	4,887	4,649	(239)	5,113	226
<u>Area 4</u>					
Kennedy	1,254	905	(350)	995	(259)
Magruder	1,157	1,080	(77)	1,188	31
Paint Branch	1,529	1,535	6	1,688	159
Sherwood	1,288	1,341	53	1,475	187
Springbrook	<u>1,639</u>	<u>1,854</u>	<u>215</u>	<u>2,039</u>	<u>400</u>
Subtotal	6,867	6,714	(153)	7,385	518
	=====	=====	=====	=====	=====
Total	23,756	23,706	(50)	26,077	2,321

1 Enrollment projections by Montgomery County Public Schools.

2 Cluster capacity as stated in the County Council's Approved FY 91-96 CIP. 100 percent of JIM program capacity is defined as 90 percent of the state rated capacity (i.e., 22.5 students per classroom).

3 Poolesville's JIM and High school are one facility.

Source: Montgomery County Public Schools, Educational Facilities Planning and Development; the Montgomery County Planning Department, Research Division; and the FY 91-96 CIP as approved by County Council.

Table 5
 SENIOR SCHOOLS BY HIGH SCHOOL CLUSTER AND AREA
 Comparison of 1994 MCPS Projected High School Enrollment to
 County Council Approved FY 91 - FY 96 CIP Program Capacity

	A	B	C	D	E
		100% of 1994 Program		110% of 1994 Program	
School Policy Areas (High School Cluster)	September 1994 Enrollment Projected by MCPS ¹	Capacity With County Council Approved FY 91-96 CIP ²	Capacity Remaining at 100% B-A	Capacity with County Council Approved FY 91-96 CIP B*110%	Capacity Remaining at 110% D-A
Area 1					
Bethesda-Chevy Chase	1,239	1,535	296	1,688	449
Blair	2,317	2,039	(279)	2,242	(75)
Einstein	1,289	1,431	142	1,574	285
Walter Johnson	1,213	1,557	344	1,713	500
Whitman	<u>1,300</u>	<u>1,458</u>	<u>158</u>	<u>1,604</u>	<u>304</u>
Subtotal	7,358	8,019	661	8,821	1,463
Area 2					
Churchill	1,474	1,589	115	1,747	273
R.Montgomery	1,492	1,530	38	1,683	191
Quince Orchard	1,979	1,890	(89)	2,079	100
Rockville	1,145	1,314	169	1,445	300
Wheaton	1,351	1,233	(118)	1,356	5
Wootton	<u>1,703</u>	<u>1,575</u>	<u>(128)</u>	<u>1,733</u>	<u>30</u>
Subtotal	9,144	9,131	(14)	10,044	900
Area 3					
Damascus	1,236	1,530	294	1,683	447
Gaithersburg	1,872	1,841	(32)	2,025	153
Poolesville ³	681	860	179	945	264
Seneca Valley	1,757	1,688	(70)	1,856	99
Watkins Mill	<u>1,690</u>	<u>1,508</u>	<u>(183)</u>	<u>1,658</u>	<u>(32)</u>
Subtotal	7,236	7,425	189	8,168	932
Area 4					
Kennedy	1,292	1,350	58	1,485	193
Magruder	1,546	1,337	(210)	1,470	(76)
Paint Branch	1,679	1,674	(5)	1,841	162
Sherwood	1,493	1,539	46	1,693	200
Springbrook	<u>2,065</u>	<u>2,070</u>	<u>5</u>	<u>2,277</u>	<u>212</u>
Subtotal	8,075	7,970	(106)	8,766	691
	=====	=====	=====	=====	=====
Total	31,813	32,544	731	35,798	3,985

1 Enrollment projections by Montgomery County Public Schools.

2 Cluster capacity as stated in the County Council's Approved FY 91-96 CIP. 100 percent of high school program capacity is defined as 90 percent of the state rated capacity (i.e., 22.5 students per classroom).

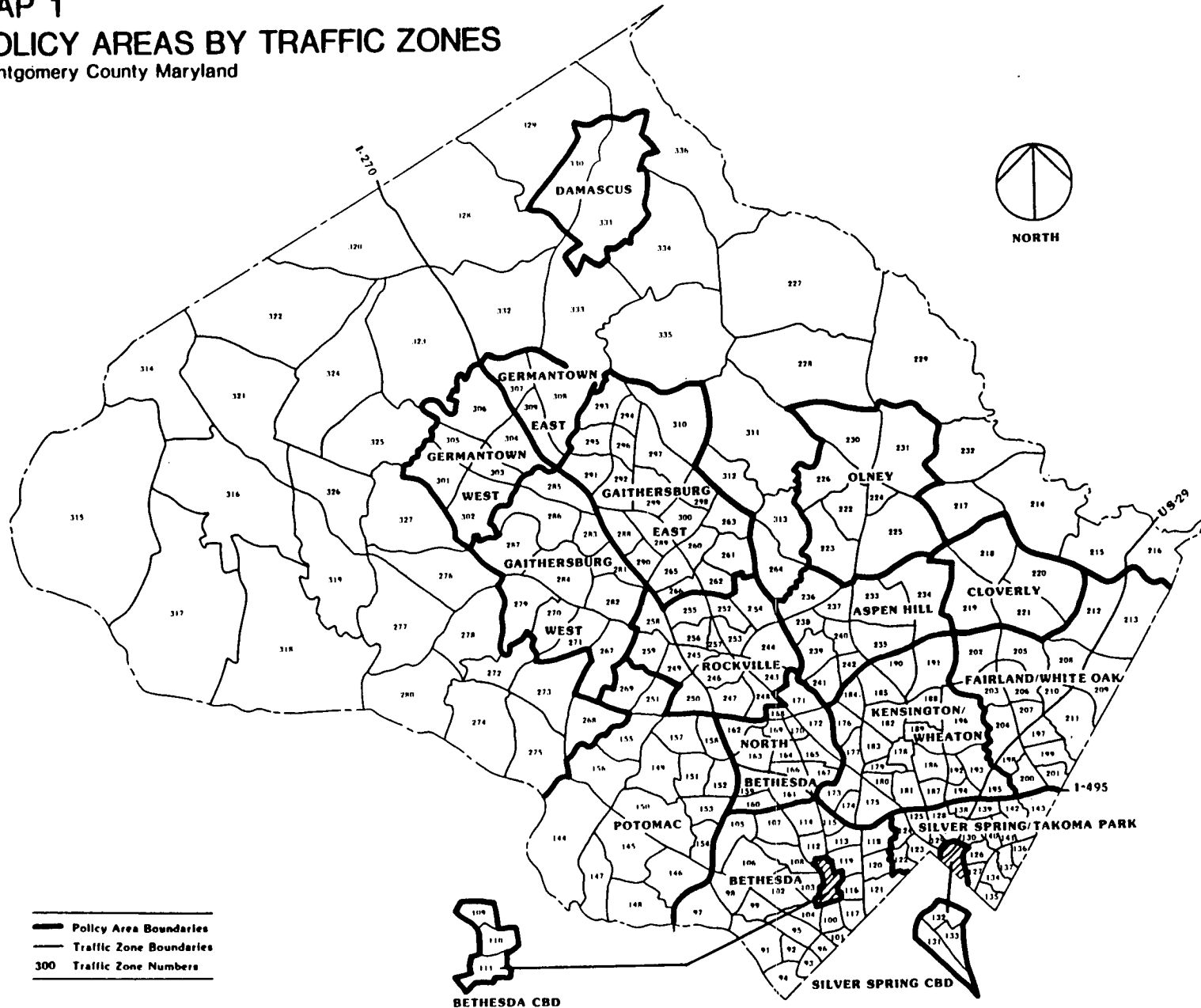
3 Poolesville's JIM and High school are one facility.

Source: Montgomery County Public Schools, Educational Facilities Planning and Development; the Montgomery County Planning Department, Research Division; and the FY 91-96 CIP as approved by the County Council.

MAP 1

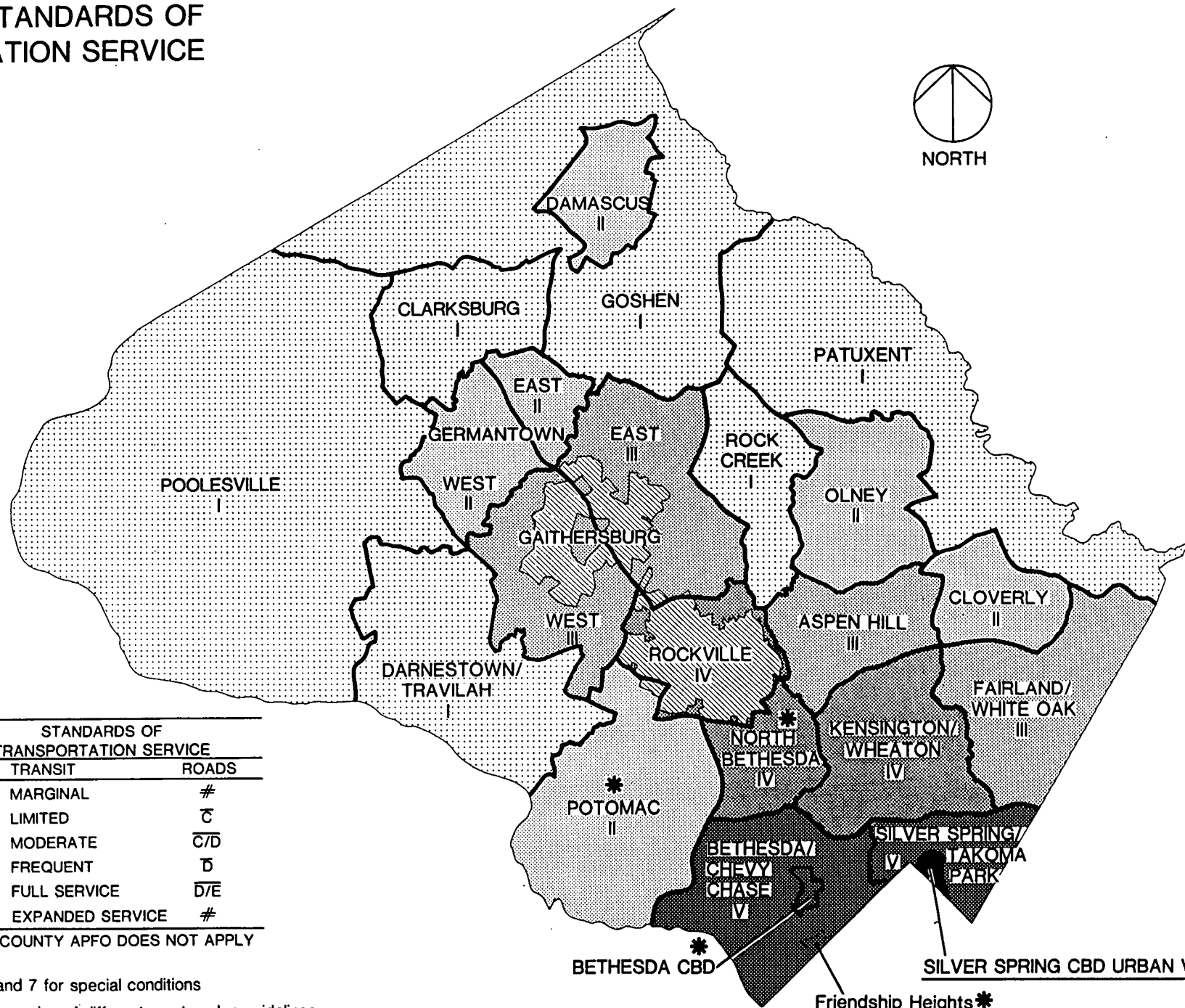
POLICY AREAS BY TRAFFIC ZONES

Montgomery County Maryland



MAP 2 STANDARDS OF TRANSPORTATION SERVICE

39

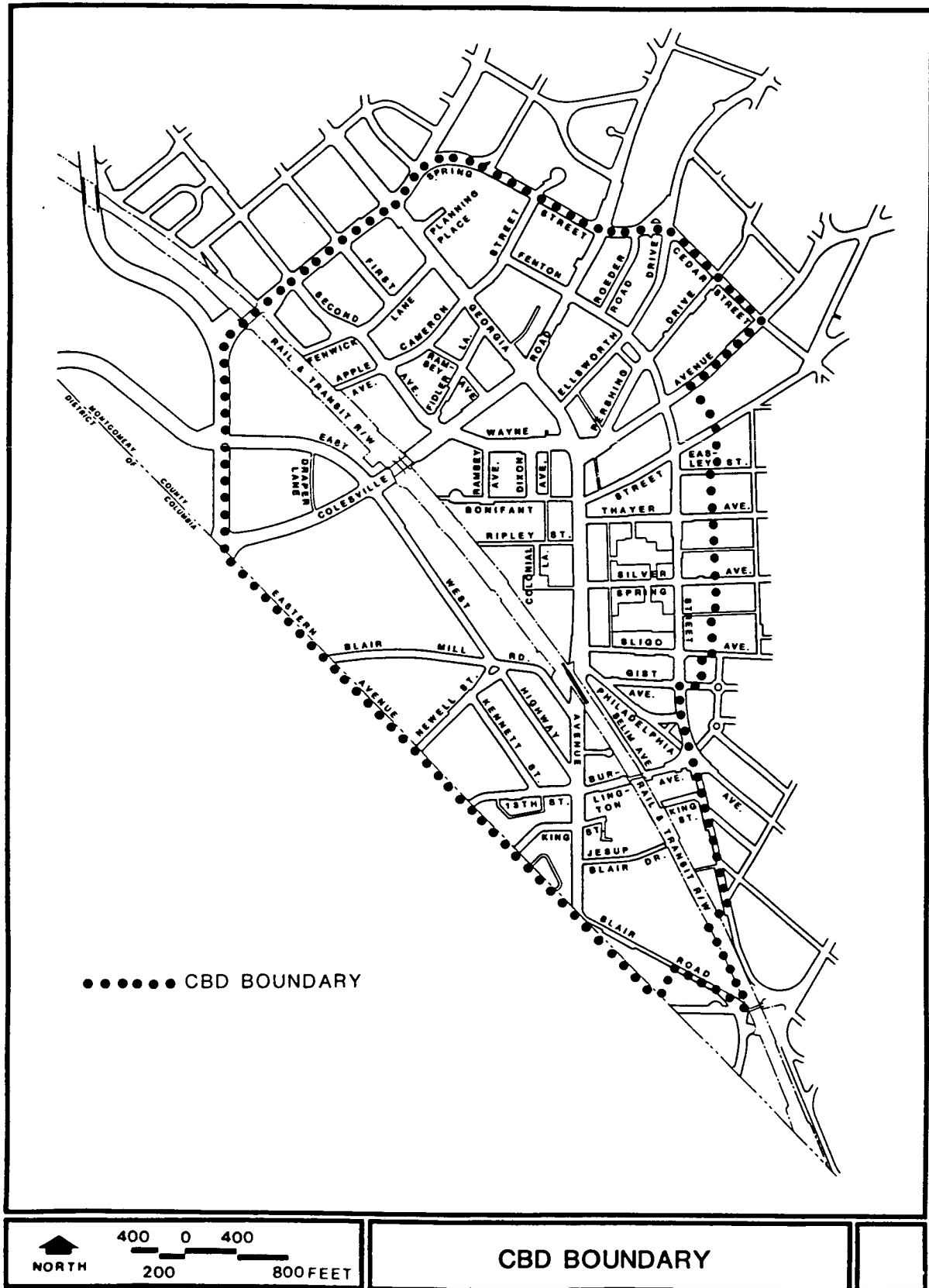


KEY	STANDARDS OF TRANSPORTATION SERVICE	
	TRANSIT	ROADS
GROUP I	MARGINAL	#
GROUP II	LIMITED	C
GROUP III	MODERATE	C/D
GROUP IV	FREQUENT	D
GROUP V	FULL SERVICE	D/E
GROUP VI	EXPANDED SERVICE	#
MUNICIPALITIES:COUNTY APFO DOES NOT APPLY		

See text on page 5 and 7 for special conditions

* See page 5 for a discussion of different master plan guidelines

MAP 3 SILVER SPRING POLICY AREA BOUNDARY



MONTGOMERY COUNTY PUBLIC SCHOOLS

HIGH SCHOOL CLUSTERS

MAP 4

